IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMP No. 1994 of 2020 in CWP No. 688 of 2020
Reserved on: 26.11.2020
Date of Decision: 22.12.2020

Tarawati **...Petitioner.**

Versus

Union of India & Others **...Respondents.**

Coram:

The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice.
The Hon'ble Mr. Justice Anoop Chitkara, Judge.

Whether approved for reporting?[1] ***NO***.

For the petitioner: Mr. Ajay Sipahiya, Advocate.

For the respondent: Mr. Rajesh K. Sharma, ASGI for respondent No.1.

Mr. K.D. Shreedhar, Senior Advocate with Ms. Shreya Chauhan, Advocate for respondent No.2.

Mr. Ashok Sharma, A.G. with Ms. Rita Goswami & Mr. Nand Lal Thakur, Addl. A.Gs. for respondents No.3 to 6, 8.

Mr. Tara Singh Chauhan, Advocate for respondent No.7.

COURT PROCEEDINGS CONVENED THROUGH VIDEO CONFERENCE

Anoop Chitkara, Judge.

Empowered with compensation amount of INR 1,26,31,724/-, (Rs. One Crore twenty six lacs thirty one thousand seven hundred and twenty four only), the petitioner has come up before this Court seeking a writ of Certiorari for quashing of notice dated 3.2.2020 and Award No.28/2 dated 16.9.2017 and also a writ of mandamus against the respondents, firstly not to demolish the structure standing over the land, which the respondents had not acquired for

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

widening and four-lane project of Parwanoo-Solan stretch of National Highway-22, and secondly to re-determine the compensation amount etc.

2. The respondents have filed their response to the main writ petition as well as to the interim application, which is subject matter of the present order.

3. Respondents No.3, 5 and 6, filed detailed reply and stated that initially the land of the petitioner comprised in Khasra No.494/200/45/1 to the extent of 1 biswa was acquired out of total 5 biswas, for four laning of National Highway-22, vide award No.28, dated 31.3.2016. After that vide award dated 28/2, dated 16.09.2017, the respondents had acquired building of the petitioner existing on the land mentioned in the said award, which was one biswa comprised in Khasra No.494/200/45/2. Respondents No.3, 5 and 6 further clarified that the structure standing on this land stood already acquired vide award No.28/B, dated 29.9.2018. It is further mentioned in paragraph 5 of the response that the building of the petitioner was within the controlled width of National Highway, and out of 5 biswas of initial ownership, three biswas of the land still remained with the petitioner. In response to paragraph 6, the respondents admitted that they intend to disconnect the electricity and water supply because he was not vacating the building for which he had already received the compensation.

4. The National Highway Authority of India, second respondent, filed detailed response. It is appropriate to extract paragraph 1 of the preliminary submissions as follows:-

> " That at the very outset it is submitted that the petitioner has been duly compensated for her land comprised in Khasra No.494/200/45, vide award No.28 (Annexure P-1), dated 31.3.2016, whereby she was awarded a sum of Rs.5,91,371/- for the compensation of land. Thereafter, her land was further acquired and she was awarded Rs.5,57,815/- vide award No.28/B (Annexure P-9) dated 29.09.2018. She was further awarded Rs.1,14,82,538 (Rs. One crore, fourteen lacs eighty two thousand five hundred and thirty eight) for compensation of structures vide award No.28/2 dated 16.09.2017 (Annexure

> P-11). **The awarded amount of compensation for land and structure has already been paid to the petitioner.** It is pertinent to mention that the petitioner has challenged the award before an arbitrator as provided in Section 3G(5) of the National Highway Act, 1956 and if the compensation amount will be enhanced the same will be paid by the replying respondent. **The notices of disconnection of water and electricity were served to the petitioner so that the possession of the compensated structure could be given to the answering respondent. Therefore, the petitioner after receiving the entire compensation cannot obstruct the process of acquiring the structure by way of the instant writ petition**."

5. We have heard learned counsel for the parties and have also gone through the records.

6. Mr. Ajay Sipahiya, learned counsel for the petitioner submits that if this Court vacates the interim order, then the main writ petition will become infructuous. He further submits that if the structure will be demolished then it can never be built up.

7. In response, Mr. Ashok Sharma, learned Advocate General states that the entire development hampers because of encroachments and non-removal of structure, for which the persons have already received the compensation and as such the stay be vacated.

8. Mr. K.D. Shreedhar, learned Senior Advocate assisted by Ms. Shreya Chauhan, Advocate, representing NHAI has sought vacation of stay on the ground that around 200 meters of the stretch cannot be completed because of the aforesaid interim order. Mr. Shreedhar, on instructions, submitted that once the contract stands awarded and the contractor is unable to execute the work because of the factors beyond the control, then NHAI may under an obligation to pay handling charges, which are roughly ₹14,000/- per meter per day. Learned counsel further submits that because of this, the cost of the project increased manifold. Drawing the attention to Section 20-A of the Specific Relief Act, 1963, Mr. Shreedhar, submits that no injunction should be granted involving the contract relating to infrastructural project.

9. Another grudge of the petitioner is mentioned in paragraph 16(i), which shows his heartburning, and appears to be genuine. In this paragraph, the petitioner has mentioned the grievance against the respondents and has also named other encroachers to protect whom the NHAI and other respondents are purposely widening the road over the property of the petitioner. Relevant extract of paragraph 16 (i) reads as follows:

> "(i) Because the Notice dated 03.02.2020 issued by Respondent No.6 is actuated by mala fides as the action on the part of the concerned Respondent especially Respondent No.6 is aimed at helping the valley side residents. **Though the total width of land as per status Report dated 15.7.2017, filed by Respondent No.6 in CWP No. 1360 of 2016 before this Hon'ble Court was 28.5 meters (including the land of the petitioner measuring to be 1 biswas acquired vide Award No.28) and as such after further acquisition of 1 biswa land of the petitioner vide Award No.28/B, dated 29.09.2018 at present on papers the NHAI is having 30.5 meters of the available land but on the spot the road has been constructed merely upon 21-22 meters (including the land of the Petitioner which has been acquired by the concerned Respondent) due to the unauthorized occupations/ encroachments upon the National Highway by some of the Valley side residents namely Proprietor of K.K. Blossom High School, Smt. Sharda W/o Shri Naseem Ahmed, Shri Madan and Shri T.R.Thakur- who are in possession of 16-00 biswas, 06-00 biswas, 03-00 biswas and 08-00 Biswas of land respectively on the spot whereas they are the owners of 09-00 biswas, 02-00 biswas, 01-00 biswa and 00-04-13 biswansi land respectively as per the revenue record of Tehsil Solan. The entire exercise is to provide undue benefits to the valley side residents who are having unauthorized occupation/encroachment at the spot on the NH-22 at Village Rabon, Solan which is required to be vacated so as to provide service lane on both sides of the four lane.**"

10. The bigger grudge has a smaller answer. Simply because some people are in encroachment over the Government land and some of the respondents are sleeping over the matter, either they are in hands and gloves with them or because of sheer lethargy on their part, or the encroachers are so

powerful that even law cannot touch them, would not confer any right upon the petitioner to continue in possession over the property for which he had already received the compensation. Needless to say, that once the names of the encroachers along with the extent of encroachment, now is within the knowledge of the respondents, if they continue to sleep over the matter, it would establish their connivance with such encroachers and demonstrate their involvement for extraneous reasons. It would be for their superior officer not only to take strict disciplinary action against such the erring officers/officials, but also to ensure that such encroachments are removed from the entire National Highway-22, and also from the land appurtenant to it, wherever such encroachments exist, without any further delay.

11. The writ petition was filed during the winter vacation and vide order dated 12.2.2020, learned Vacation Judge, had directed the respondents not to remove the structure of the petitioner from the land comprised in Khasra No.494/200/45/2/2 on the averments that it was never acquired. However, learned Singh Judge had clarified that it shall not debar the respondents from carrying out activities necessary for construction of road in the land already acquired for the said purpose.

12. Now, after hearing the parties and going through the record, and the analysis mentioned above, we do not think that the petitioner has made out any case for stay or interim relief.

13. For the reasons mentioned above, this application is dismissed and the interim order dated 12/2/2020, is vacated forthwith.

(L. Narayana Swamy),
Chief Justice.

(Anoop Chitkara),
Judge.

December 22, 2020 (ps)